

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
COMPANY CAUSE NO. 30 OF 2019
IN THE MATTER OF THE INSOLVENCY ACT 2011
AND
IN THE MATTER OF UGANDA TELECOM LIMITED (IN ADMINISTRATION)
AND
IN THE MATTER OF AN APPLICATION BY UGANDA COMMUNICATIONS
EMPLOYEES' CONTRIBUTORY PENSION SCHEME (UCEPS) TO VARY THE DEED
OF ADMINISTRATION OF UGANDA TELECOM LIMITED/REPLACE THE
ADMINISTRATOR

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. This is the ruling in the application by Uganda Communications Employees' Contributory Pensions Scheme (herein after referred to as the applicant). It concerns Uganda Telecom Limited (hereinafter referred to as UTL) which is in administration. The Applicant, one of the creditors of UTL, seeks the replacement of Mr. Bemanya Twebaze, the Official Receiver, as the administrator of UTL, and have him replaced by Mr. Nicholas Mwasame.
2. The Official Receiver (hereinafter referred to as the Respondent) filed a reply to the application. The Respondent represents the interests of UTL. In essence the Respondent disputes the allegations levelled against him but isn't opposed to his removal as administrator of UTL. However, the Respondent contends that court in choosing his replacement ought to be guided by the full list of registered insolvency practitioners which was availed. Counsel for the Applicant in oral rejoinder agreed to this.

3. This application also concerns varying the administration deed executed between the Company and the Respondent. Under section 167 of the Insolvency Act, an application by a creditor for variation of an administration deed can only be entertained by Court if such variation is pursuant to a resolution passed at a creditors' meeting. Section 167 provides that an administration deed may be varied by a resolution passed at a creditors' meeting. Where an administration deed is varied [at a creditor's meeting] the court may, on the application of a creditor or the administrator, cancel or confirm the variation, in whole or in part and subject to conditions as it thinks fit and may make other order as it thinks appropriate.
4. There is no demonstration that the requirements of section 167 set out above were met before the Applicant filed this application. There's no creditors' resolution for variation of the administration deed at the time of filing this application. So, this application cannot be granted under this section.
5. The next option is under S.174 (1) (c) of the Insolvency Act which gives this court wide discretion to remove and appoint a new administrator. Such appointment ought to take into account the processes by which an administrator is ordinarily appointed and Regulation 162(1) of the Insolvency Regulations which provides that where there is a vacancy in the office of the administrator as a result of death, resignation, removal, ceasing to practice as an insolvency practitioner or any other reason, and no person is acting as administrator, the official receiver shall act as administrator until another insolvency practitioner is appointed as administrator by the debtor and the debtor's creditors.
6. I will therefore proceed under this section in considering the application. I wish also to point out that since the Respondent is not opposed to his replacement as the administrator, I will not concern myself with his suitability or otherwise as it does not matter now. For clarity, the grounds advanced by the Applicant for Mr. Bemanya's removal when weighed against his reply do not satisfy me. However, given the Respondent is not opposed to his removal, I will proceed to appoint his replacement for the effective administration of UTL.

7. In choosing the new administrator, I wish to reiterate the purpose of administration. It is to manage the affairs of the company in distress and take account of the interests of all stakeholders- including all creditors, with the view of turning the affairs of the company back to normal and profitability. The administrator is required to work independently in this process and ensure fast-tracking the return of the company to normalcy by the end of administration timeframe. In this case, the administration of UTL was extended until November 2020.
8. In choosing Mr. Bemanya's replacement, I will also be guided by the list of registered insolvency practitioners that the Respondent- whose statutory duty it is to register them, has availed. It is also a legal requirement that such administrator must be a registered practitioner in Uganda. I have carefully considered the persons listed and made background checks in determining that they have the requisite experience to competently administer UTL.
9. I am also mindful that even while we have this list, insolvency practice is largely still on the low end in this country. This means that several, if not many more, of the practitioners on the list may not have actual sound insolvency practice experience.
10. After carefully considering the list, I, respectfully, find that the Applicant's choice of Mr. Mwasame falls short of the requisite grounding in insolvency practice and experience.
11. From the list, I am more inclined in my discretion, to consider senior counsel- Ruth Sebatindira,, who is a founding partner in arguably Uganda's largest insolvency practice law firm- Ligormac, as the competent replacement of Mr. Bemanya. She also has much more years of legal experience than Mr. Mwasame and has exhibited leadership in different high offices like being president of the Uganda Law society, which required making critical decisions- an aspect vital for the UTL administrator in issue.
12. Mindful also that, unlike Mr. Mwasame, she is not the choice of any given creditors, I view her as more capable of working independently and objectively in dealing with the concerns of all stakeholders in this administration process.

13. I therefore, under Section 174 and after cautioning myself of the requirements of Regulation 162, hereby appoint senior counsel. Ruth Sebatindra as the new administrator of UTL for the remaining period earlier set by this court, until November 2020. I also hereby direct the new administrator to ensure effective and timely administration of UTL and return it back to normal operation and profitability by the end of the administration period. She should also be mindful that administration cannot go on for eternity.

14. Each party shall bear its own costs.

I so order.

Lydia Mugambe
Judge
2nd January 2020